

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EMPIRE COMMUNITY DEVELOPMENT, LLC,

Plaintiff,

MEMORANDUM & ORDER

23-CV-5872 (EK) (MJ)

-against-

EWART SMALL, and NEW YORK CITY
ENVIRONMENTAL CONTROL BOARD,

Defendants.

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ERIC KOMITEE, United States District Judge:

The Court has received Magistrate Judge Bloom's Report and Recommendation (R&R) dated June 21, 2024. ECF No. 15.

Judge Bloom recommends that the Court grant the plaintiff's motion for default judgment against both defendants. Neither party has filed objections and the time to do so has expired. Accordingly, the Court reviews Judge Bloom's recommendation for clear error on the face of the record. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition; accord *State Farm Mut. Auto. Ins. Co. v. Grafman*, 968 F. Supp. 2d 480, 481 (E.D.N.Y. 2013).

Having reviewed the record, I find no error in Judge Bloom's comprehensive R&R and therefore adopt it in its entirety. Though the Environmental Control Board is not technically a suable entity, see *Miss Jones, LLC v. Vierra*, No.

18-CV-1398, 2018 WL 11467906, at *1 (E.D.N.Y. Dec. 7, 2018), the claim against it is properly construed as one against the City. *Id.* The Corporation Counsel's office entered a limited appearance "on behalf of" the ECB. See ECF 12. And while the plaintiff may have fallen short of the "heightened pleading requirement to establish liability" against a government creditor, see *Empire Cmty. Dev., LLC v. Clarke*, No. 22-CV-2230, 2024 WL 862235, at *2 (E.D.N.Y. Feb. 29, 2024), the R&R properly took judicial notice of "facts showing the particular nature of the [ECB's] interest or lien on the real property." *Id.*; see R&R at 7-8.

Thus, the plaintiff's motion for default judgment is granted against both defendants. As against defendant Ewart Small, the plaintiff is awarded \$93,075.16 (in principal) along with \$77,006.60 in accrued interest through November 1, 2023, plus *per diem* interest of \$31.24 until the date of entry of judgment. As to the New York City Environmental Control Board, its interest in the subject property is foreclosed; the property at 69-40 Hillmeyer Avenue, Arverne, NY 11692 shall be foreclosed upon and sold, and Susan Ellen Rizos, Esq., shall be appointed the referee for that foreclosure sale. The Clerk of Court is

respectfully directed to enter judgment against the defendants
and close the case.

SO ORDERED.

/s/ Eric Komitee
ERIC KOMITEE
United States District Judge

Dated: September 12, 2024
Brooklyn, New York